

## **TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Phillip R. Holste, Program Manager, 954-797-1041

**PREPARED BY:** Phillip R. Holste, Program Manager

**SUBJECT:** Resolution

**AFFECTED DISTRICT:** 4

**ITEM REQUEST:** **Schedule for Council Meeting**

**TITLE OF AGENDA ITEM:** AGREEMENT - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR AND APPROPRIATE TOWN OFFICIALS TO EXECUTE THE PURCHASE AND SALE AGREEMENT WITH SOUTHERN HOMES FOR THE PROPERTY KNOWN AS THE GOVERNOR LEROY COLLINS PARK EXPANSION; AND PROVIDING FOR AN EFFECTIVE DATE.

**REPORT IN BRIEF:** On December 17, 2008 the Town Council approved the initiation of due diligence procedures on the Governor Leroy Collins Expansion site. The site is currently owned by Southern Homes, who is a willing seller. The proposed expansion site totals 32.1 acres and consists of 26.7 acres to be conveyed through purchase and 5.4 acres to be donated through the site plan process. As part of this agreement, the Town will grant Southern Homes an approximate 5 acres drainage and lake easement for the Blackstone development. The lake would be accessible to Governor Leroy Collins Park visitors. Exhibit A, B, and C of the contract identified the conveyed property, donated property, and easement areas. This resolution is the proposed purchase and sale agreement for the property.

The proposed purchase price is \$2,600,000. The average appraised value per acre is \$95,000. Based upon the conveyed area, the price per acre is \$97,378 or 2.5% above the average appraised value. If one considers the entire expansion area, conveyed and donated property, the price per acre is \$80,997 or 14.7% below the average appraised value.

The total estimated acquisition cost is \$2,650,000. All acquisition costs would be charged to the District 4 Open Space Bond account. The Town has completed its appraisals. The Phase I Environmental Site Assessment (ESA), survey, and title search will be conducted upon agreement approval. Additional due diligence may include Phase

II ESA if necessary. The Town's inspection period is 30 days from the effective date of the purchase and sale agreement. This inspection period can be extended if additional environmental assessments are needed.

**PREVIOUS ACTIONS:** On December 17, 2008, the Town Council approved the initiation of due diligence procedures for the property. At the September 8, 2009 Town Council meeting per Staff's request Council tabled to September 21, 2009.

**CONCURRENCES:** The Town Attorney has reviewed and approved the contract.

**FISCAL IMPACT:** Yes

Has request been budgeted? No

If no, amount needed: \$2,650,000

What account will funds be appropriated from: 030-3006-572.65-04:  
District 4 Open Space      Bond Account

Additional Comments:

**RECOMMENDATION(S):** Motion to approve resolution

**Attachment(s):** Resolution, Exhibit A: Purchase and Sale Agreement; Exhibit B: Site Map; Exhibit C: Estimated Expenses

RESOLUTION \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR AND APPROPRIATE TOWN OFFICIALS TO EXECUTE THE PURCHASE AND SALE AGREEMENT WITH SOUTHERN HOMES FOR THE PROPERTY KNOWN AS THE GOVERNOR LEROY COLLINS PARK EXPANSION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in September 2005, the voters of the Town of Davie approved the issuance of general obligation "Open Space" bonds in order to protect the quality of water bodies, to preserve and improve wildlife habitat and parks, to complete the recreational trail system, and to protect natural lands from development; and

WHEREAS, the Town Council of the Town of Davie wishes to preserve the site known as the Governor Leroy Collins Park Expansion for open space and intends to utilize funding from the Open Space Bond toward the property's acquisition; and

WHEREAS, Southern Homes is the present owner of the Governor Leroy Collins Park Expansion and is a willing seller; and

WHEREAS, the Town Council approved the initiation of due diligence procedures at its December 17 2008 meeting;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. The Town Council of the Town of Davie hereby approves the Purchase and Sale Agreement (Exhibit A) for the Governor Leroy Collins Park Expansion and authorizes its execution by the Mayor and appropriate Town officials.

SECTION 2. The Town Council also authorizes the Mayor and appropriate Town officials to execute any additional documents related to this acquisition.

SECTION 3. The Town Council expresses its intent to utilize proceeds from the District 4 Open Space Bond Account (#030-3006-572.65-04) for the acquisition of the property.

SECTION 4. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ ,  
2009.

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

ATTEST:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ , 2009

**EXHIBIT A: PURCHASE CONTRACT**

## AGREEMENT FOR PURCHASE, SALE AND DEDICATION OF REAL PROPERTY

THIS AGREEMENT FOR PURCHASE, SALE AND DEDICATION OF REAL PROPERTY (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009 by and between the TOWN OF DAVIE, a Florida municipal corporation (the "Purchaser"), and SOUTHERN HOMES OF DAVIE V, LLC, a Florida limited liability company (the "Seller").

### WITNESSETH:

In consideration of the mutual agreements and upon and subject to the terms and conditions herein contained, the parties hereto agree as follows:

#### 1. DEFINITIONS.

The following terms when used in this Agreement shall have the following meanings:

1.1 Property. The term "Property" shall mean collectively: (a) that certain parcel consisting of approximately twenty-six and 70/100 (26.70) acres of vacant real property located in the Town of Davie, County of Broward, State of Florida, more particularly described in Exhibit "A" attached hereto and made a part hereof (the "P/S Property"); and (b) that certain parcel consisting of approximately five and 40/100 (5.40) acres of vacant real property located in the Town of Davie, County of Broward, State of Florida, more particularly described in Exhibit "C" attached hereto and made a part hereof (the "Open Space Property"). The P/S Property and the Open Space Property are contiguous to one another and together comprise a total of approximately thirty-two and 10/100 (32.10) acres of vacant real property.

1.2 Closing and Closing Date. The closing (the "Closing") of the Property shall take place on (the "Closing Date") the fifteenth (15<sup>th</sup>) day after the expiration of the "Inspection Period", "Extended Inspection Period", or the "Supplemental Inspection Period" (as those terms are hereinafter defined), as applicable.

1.3 Deed. The Special Warranty Deed conveying the Property from Seller to Purchaser (the "Deed").

1.4 Earnest Money. The sum of Fifty Thousand and No/100 (\$50,000.00) Dollars.

1.5 Effective Date. The Effective Date of this Agreement shall be the date on which the Purchaser approves this Agreement at a duly noticed public hearing.

1.6 Escrow Agent. The Escrow Agent shall be the law firm of Ryan & Ryan, PA, Attn: Archie Ryan, Esq., 700 East Dania Beach Boulevard, Dania Beach, Florida 33004.

1.7 Seller's Address. Seller's mailing address is 12895 SW 132 Street, Suite 200, Miami, Florida 33186, Attn: Hector Garcia.

1.8 Purchaser's Address. Purchaser's mailing address is 6591 Orange Drive, Davie, Florida 33314, Attn: Phillip R. Holste, Program Manager Administrator.

1.9 Other Definitions. Terms defined elsewhere in this Agreement shall have their defined meaning wherever capitalized herein. Wherever appropriate in this Agreement, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of each gender shall be deemed to comprehend either or both of the other genders. As used in this Agreement, the terms "herein", "hereof" and the like shall refer to this Agreement in its entirety and not to any specific section or subsection.

## 2. PURCHASE PRICE.

Subject to the terms and conditions set forth in this Agreement: (a) Seller hereby agrees to sell to Purchaser, and Purchaser hereby agrees to purchase from Seller, the P/S Property for the "Purchase Price" of Two Million Six Hundred Thousand and No/100 (\$2,600,000.00) Dollars; and (b) Seller hereby agrees to dedicate to Purchaser, and Purchaser hereby agrees to accept such dedication from Seller of, the Open Space Property free of charge.

2.1 Earnest Money. Concurrently with the execution of this Agreement, Purchaser shall deliver the Earnest Money to the Escrow Agent who shall deposit and hold the same in an interest bearing escrow account pursuant to the terms of this Agreement. If Seller defaults under this Agreement (after giving effect to any applicable notice and cure provisions), then Purchaser shall have the right to terminate this Agreement and receive the immediate return of the Earnest Money (and all interest earned thereon) as provided in Section 11 below. At Closing: (a) the Escrow Agent shall deliver the Earnest Money to Seller by wire transfer of readily negotiable funds to an account identified by Seller in writing; (b) Purchaser shall receive a credit against the Purchase Price in an amount equal to the Earnest Money; and (c) the Escrow Agent shall deliver all interest accrued on the Earnest Money while held in escrow to Purchaser.

2.2 Balance of Purchase Price. Purchaser shall pay Seller the balance of the Purchase Price at Closing by wire transfer of readily negotiable funds to an account identified by Seller in writing.

The sale and dedication of the Property to Purchaser includes: (x) all right, title and interest of Seller, if any, in any right-of-ways, alleys, waters, privileges, easements and appurtenances which are on or benefit the Property; (x) all right, title and interest of Seller, if any, in any property lying in the bed of any public or private street or highway, opened or proposed adjacent to the Property to the center line thereof; and (z) all contracts and leases affecting the Property, if any (collectively, the "Contracts and Leases").

## 3. INSPECTIONS.

Purchaser shall have thirty (30) days commencing on the Effective Date (the "Inspection Period") to perform all tests and inspections of the Property that Purchaser deems necessary, and Seller shall provide Purchaser and its agents, at all times during the Inspection Period, Extended Inspection Period and Supplemental Inspection Period (as applicable), reasonable access to the Property to perform any such tests or inspections; provided, however, Purchaser shall give Seller reasonable advance notice of the date and time on which Purchaser or any of its agents will be going upon the Property to perform any test or inspection, and Seller shall have the right to be present during the performance thereof. The scope of the tests and inspections contemplated herein shall be determined by Purchaser in its sole discretion. Purchaser shall, promptly upon the completion of any test or inspection, restore the Property back to substantially the same condition it was in immediately prior to the test or inspection. Purchaser shall indemnify, defend and hold Seller harmless from and against any and all claims, causes of action, losses, damages, liabilities, liens, fees, costs and expenses (including reasonable attorneys' fees and costs through trial and all appellate levels and proceedings) incurred by Seller in connection with, arising from or as a result of Purchaser's or any of its agents' acts or omissions while performing any test or inspection of the Property. Purchaser's obligations under this paragraph to restore the Property and to indemnify, defend and hold Seller harmless shall survive Closing or any earlier termination of this Agreement.

Purchaser shall have the right, but not the obligation, to obtain, at its sole cost and expense, a Phase I Environmental Audit of the Property (the "Phase I") prior to the expiration of the Inspection Period. If Purchaser obtains a Phase I of the Property prior to the expiration of the Inspection Period and the same is unsatisfactory to Purchaser in any respect, then Purchaser shall have the right to extend the Inspection Period an additional thirty (30) days (the "Extended Inspection Period") to obtain, at its sole cost and expense, a Phase II Environmental Audit of the Property (the "Phase II") prior to the expiration of

the Extended Inspection Period. To exercise such extension right, however, Purchaser must first deliver to Seller, prior to the expiration of the Inspection Period, a complete copy of the completed Phase I together with written notice that the same is unsatisfactory to Purchaser and that Purchaser is electing to extend the Inspection Period to the Extended Inspection Period to obtain the Phase II (the "Phase II Extension Notice"). If Seller fails to timely receive the Phase I and Phase II Extension Notice from Purchaser, then Purchaser shall have waived its right to extend the Inspection Period.

If Purchaser obtains a Phase II of the Property prior to the expiration of the Extended Inspection Period and the same is unsatisfactory to Purchaser in any respect, then Purchaser shall have the right to extend the Extended Inspection Period an additional thirty (30) days (the "Supplemental Inspection Period") to obtain, at its sole cost and expense, an Extended Phase II Environmental Audit of the Property (the "Extended Phase II") prior to the expiration of the Supplemental Inspection Period. To exercise such extension right, however, Purchaser must first deliver to Seller, prior to the expiration of the Extended Inspection Period, a complete copy of the completed Phase II together with written notice that the same is unsatisfactory to Purchaser and that Purchaser is electing to extend the Extended Inspection Period to the Supplemental Inspection Period to obtain the Extended Phase II (the "Extended Phase II Extension Notice"). If Seller fails to timely receive the Extended Phase II and Extended Phase II Extension Notice from Purchaser, then Purchaser shall have waived its right to extend the Extended Inspection Period.

Purchaser shall provide Seller with complete copies of the completed Phase I, Phase II and Extended Phase II (as applicable) prior to the expiration of the Inspection Period, Extended Inspection Period or Supplemental Inspection Period (as applicable).

If Purchaser is not, in its sole and absolute discretion, satisfied with the Property for any reason whatsoever, then Purchaser shall have the right to terminate this Agreement by delivering a written notice of termination to Seller prior to the expiration of the Inspection Period, Extended Inspection Period or Supplemental Inspection Period (as applicable). If Seller timely receives such written notice of termination from Purchaser, then this Agreement shall terminate, the Escrow Agent shall promptly return the Earnest Money (and all interest earned thereon) to Purchaser and the parties shall be released from this Agreement, except from those terms, provisions, obligations and liabilities that expressly survive the termination of this Agreement. If, however, Seller does not timely receive a written notice of termination from Purchaser, then: (a) Purchaser shall have waived its right to terminate this Agreement under this Section; and (b) the Earnest Money shall be non-refundable except in the event this Agreement is properly terminated by Purchaser under Section 11 below.

Seller, within five (5) days after the Effective Date, shall deliver to Purchaser the following items that are in its possession or under its control: (a) a copy of its existing owner's title insurance policy covering the Property; (b) a copy of its most recent survey of the Property; (c) a copy of any environmental reports (including environmental phase I and II audits) covering the Property, if any; and (d) copies of the Contracts and Leases, if any. All of the items referred to in (a) through (d) above are referred to herein collectively as the "Due Diligence Documents".

#### 4. SELLER'S REPRESENTATIONS.

To induce Purchaser to enter into this Agreement, Seller makes the following representations to Purchaser. If due to any change of fact or circumstance any such representation should become untrue in any material respect prior to Closing, then Seller shall promptly provide Purchaser with written notice of such change of fact or circumstance:

4.1 Seller shall convey the Property to Purchaser at Closing, by delivery of the Deed, subject only to the exceptions set forth in the "Title Commitment" (as hereinafter defined).

4.2 Seller has no actual knowledge of any pending or threatened claim, litigation, action or proceeding against Seller or the Property by any individual, organization, business entity or governmental agency which affects the Property or Seller's ability to perform under this Agreement.



4.3 Seller has full power and authority to enter into this Agreement and to perform its obligations hereunder. Seller's actions under this Agreement do not and will not conflict with or result in the breach of any term or provision, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon the Property by reason of, any agreement, instrument, mortgage, indenture, lien or judgment to which Seller is a party or by which Seller or the Property is subject or bound. No action by any federal, state, municipal or other governmental department, commission, board, bureau or instrumentality is necessary to make this Agreement a valid instrument binding upon Seller in accordance with its terms.

4.4 Except as otherwise permitted in Section 23 below, Seller shall not: (a) enter into any agreement, document or instrument that affects all or any portion of the Property which, by its own terms, does not terminate prior to Closing; nor (b) amend or modify any of the Contracts and Leases affecting the Property in any material respect.

4.5 No person other than Seller has any right to use, occupy or possess the Property; provided, however, Seller hereby discloses to Purchaser that the tenant (the "Cell Tower Tenant") under a certain cell tower lease affecting property adjacent to the Property has a right of ingress and egress over a portion of the Property pursuant to a recorded easement agreement. At Closing, Seller shall deliver possession of the Property to Purchaser free and clear of all leases, tenants and all others having any right to use, occupy or possess the Property, except for the right of ingress and egress of the Cell Tower Tenant pursuant to the recorded easement agreement.

4.6 Seller shall not list or offer the Property for sale or solicit or negotiate offers to sell the Property to anyone other than Purchaser while this Agreement is in effect.

4.7 Seller shall use good faith efforts to keep the Property in substantially the same physical condition from the expiration of the Inspection Period, Extended Inspection Period or Supplemental Inspection Period (as applicable) through Closing.

4.8 Seller is not a party to any unrecorded contracts, restrictions, easements, leases, options to purchase or rights of first refusal with respect to the Property, except for those that have been provided to Purchaser as part of the Due Diligence Documents, disclosed to Purchaser in this Agreement or which may be disclosed in the Title Commitment.

4.9 Seller has not received any written notice from any governmental authority claiming that the Property is in violation of any applicable statute, rule, regulation, ordinance, code, order or other governmental requirement.

If Purchaser receives a written notice from Seller advising of any change of fact or circumstance that makes any representation of Seller in this Section untrue in any material respect, then such change of fact or circumstance shall be deemed to be a default by Seller and the parties shall have the rights and remedies applicable to defaults as provided in Section 11 below.

## 5. EVIDENCE OF TITLE.

5.1 Title to the Property. Purchaser shall obtain a title insurance commitment covering the Property issued by a title insurance underwriter approved and selected by Purchaser (the "Title Commitment") insuring Purchaser's title to the Property subject only to the exceptions set forth in the Title Commitment. Purchaser shall deliver a copy of the Title Commitment (and any updates or revisions thereto), together with copies of all instruments reflected therein, to Seller within five (5) days after receiving the same.

Purchaser shall have the right to object to any exception to title set forth in the Title Commitment or matter reflected on the "Survey" (as hereinafter defined) by delivering a written notice of such objection (the "Title Objection Letter") to Seller no later than ten (10) days prior to the expiration of the Inspection Period. If Seller does not timely receive Purchaser's Title Objection Letter, then Purchaser shall have

waived its right to object to any matters contained in the Title Commitment or reflected on the Survey. If Seller timely receives Purchaser's Title Objection Letter, then Seller shall, no later than five (5) days prior to the expiration of the Inspection Period, deliver to Purchaser written notice as to which objections in Purchaser's Title Objection Letter Seller will cure (the "Title Cure Letter") on or before Closing. Seller shall have no obligation whatsoever to cure, satisfy, delete and/or discharge from the Title Commitment or public record any matter set forth in the Title Commitment or reflected on the Survey (whether or not any such matter was objected to by Purchaser), except that Seller shall, on or before Closing, take the necessary action to satisfy, delete and/or discharge from the Title Commitment and/or public record (as applicable) the following matters: (a) any B-1 Requirement of the Title Commitment specifically applicable to Seller; (b) the B-2 Standard Exceptions of the Title Commitment relating to the "gap exception", the "parties-in-possession exception" and the "mechanic's lien exception"; (c) any mechanic's or materialmen's liens recorded against the Property arising from labor, services, materials and/or supplies performed for or provided to Seller in connection with any improvement made to or upon the Property by Seller; (d) any mortgages and related loan documents recorded against the Property securing any repayment and/or performance obligation of Seller; and (e) any matter of record affecting the Property created by Seller first appearing in the public record after the original effective date of the Title Commitment. If Seller fails to deliver its Title Cure Letter, or delivers its Title Cure Letter but refuses to cure all of the objections in Purchaser's Title Objection Letter, then in either such event Purchaser shall have the right to terminate this Agreement by delivering a written notice of termination to Seller prior to the expiration of the Inspection Period. If Seller timely receives such written notice of termination from Purchaser, then this Agreement shall terminate, the Escrow Agent shall promptly return the Earnest Money (and all interest earned thereon) to Purchaser and the parties shall be released from this Agreement, except from those terms, provisions, obligations and liabilities that expressly survive the termination of this Agreement. If, however, Seller does not timely receive a written notice of termination from Purchaser, then Purchaser shall have waived its right to terminate this Agreement based on Seller's refusal to cure any or all of Purchaser's objections in its Title Objection Letter.

5.2 Survey. Purchaser shall obtain a survey of the Property (the "Survey") prepared by a registered land surveyor licensed in the State of Florida selected by Purchaser. The Survey shall: (a) show the boundaries of the Property, the location of all improvements on the Property, and all plottable matters in the Title Commitment; (b) certify the acreage of the Property (to the nearest one thousandth acre); and (c) be certified to Seller, Purchaser, the title agent, the title company and such other persons that Seller and/or Purchaser may request. Purchaser shall deliver a copy of the Survey (and all updates or revisions thereto) to Seller within five (5) days after receiving the same.

## 6. PURCHASER'S REPRESENTATIONS.

To induce Seller to enter into this Agreement, Purchaser makes the following representations to Seller. If due to any change of fact or circumstance any such representation should become untrue in any material respect prior to Closing, then Purchaser shall promptly provide Seller with written notice of such change of fact or circumstance:

6.1 Purchaser has full power and authority to enter into this Agreement and to perform its obligations hereunder.

6.2 The execution and delivery of this Agreement by Purchaser and the performance by Purchaser of its obligations hereunder have been, as may be required, duly authorized by the pertinent governmental authorities in compliance with Chapter 166 of the Florida Statutes and the Town of Davie Charter and Code of Ordinances.

6.3 No further action or approval by Purchaser or any governmental authority is necessary to make this Agreement a valid instrument binding upon Purchaser in accordance with its terms.

If Seller receives a written notice from Purchaser advising of any change of fact or circumstance that makes any representation of Purchaser in this Section untrue in any material respect, then such

change of fact or circumstance shall be deemed to be a default by Purchaser and the parties shall have the rights and remedies applicable to defaults as provided in Section 11 below.

7. CONDITIONS PRECEDENT TO CLOSING.

Each of the following events or occurrences shall be a condition precedent to Purchaser's obligation to close on the transaction contemplated by this Agreement:

7.1 All of the representations of Seller contained in Section 4 above are true and correct in all material respects as of the Closing Date;

7.2 Seller is not in default (after giving effect to any applicable notice and cure provisions) of any term, condition, covenant or other provision of this Agreement on the part of Seller to be performed and/or kept; and

7.3 Seller is able to convey good and marketable title to the Property to Purchaser at Closing, subject only to the exceptions set forth in the Title Commitment.

The parties hereby acknowledge and agree that neither this Agreement nor the transaction contemplated herein is conditioned or contingent upon Seller obtaining any new approval or modification to any existing approval for the Project.

8. CLOSING DOCUMENTS.

At Closing, each party shall deliver to the other party (as applicable), in addition to all other agreements, documents and instruments referred to elsewhere in this Agreement, the following:

8.1 Seller shall execute and deliver to Purchaser the Deed, in recordable form, conveying the Property to Purchaser.

8.2 Seller shall execute and deliver to Purchaser a "Title Affidavit" in usual and customary form sufficient to: (a) satisfy all of the Schedule B-1 Requirements of the Title Commitment specifically applicable to Seller; and (b) delete the "gap exception", the "parties-in-possession exception" and the "mechanic's lien exception".

8.3 Seller shall execute and deliver to Purchaser an affidavit confirming that Seller is not a "foreign person" within the meaning of Internal Revenue Code, Section 1445, as amended.

8.4 Purchaser shall execute and deliver to Seller the form of consent, joinder or other authorization (any such consent, joinder or other authorization is referred to herein as a "Consent") required by each governmental authority that has issued a "Project Approval" (as hereinafter defined) for Seller to submit thereto and process therewith a modification to the Project Approval issued thereby as provided in Section 23 below.

8.5 Each Party shall execute and deliver to the other party the "Lake Easement", the "Lake Maintenance Easement", the "Berm Easement", the "Drainage Easement", the "Lake Access Easement", the "Cul-de-Sac Easement" and the "Utility Easement" (as those terms are hereinafter defined) as provided in Section 23 below.

8.6 Each party shall execute and deliver to the other party a closing/settlement statement in usual and customary form.

8.7 Each party shall deliver to the other party such documentation evidencing such party's existence, good standing and authority to execute and deliver this Agreement and the other agreements, documents and instruments to be delivered by such party at Closing.

9. CLOSING COSTS, TAXES AND PRORATIONS.

9.1 Ad Valorem Taxes. Real and personal property taxes and assessments shall be prorated as of the Closing Date. The parties shall comply with Section 196.295, Florida Statutes, with respect to the payment of prorated ad valorem taxes for the year of Closing into escrow with the Broward County Revenue Collector. The foregoing tax proration may, at the request of either party, be re-prorated after Closing upon receipt of the actual tax bill covering the Property using the maximum discounted rate. This Section shall survive Closing.

9.2 Revenues and Charges. Rental income and all other revenues and charges that benefit or burden the Property shall be prorated as of the Closing Date.

9.3 Seller's Closing Costs. Seller shall pay: (a) all fees, costs, expenses and other charges payable to the consultants, attorneys and other third parties retained by Seller in connection with the transaction contemplated by this Agreement; (b) the cost of curing any exceptions to title objected to by Purchaser in its title Objection Letter that Seller elects to cure; and (c) the cost of recording the Lake Easement, the Lake Maintenance Easement, the Berm Easement, the Lake Access Easement, the Cul-de-Sac Easement and the Utility Easement.

9.4 Purchaser's Closing Costs. Purchaser shall pay: (a) all fees, costs, expenses and other charges payable to the consultants, attorneys and other third parties retained by Purchaser in connection with the transaction contemplated by this Agreement; (b) all fees, costs, expenses and other charges associated with any appraisal, tests and inspections of the Property performed by or on behalf of Purchaser (including, without limitation, the Phase I, Phase II and Extended Phase II); (c) all fees, costs, expenses and premiums associated with the issuance of the Title Commitment and the title insurance policy to be issued based thereon; (d) all fees, costs and expenses associated with the preparation of the Survey; (e) the cost of all documentary stamp tax due on the Deed; and (f) the cost of recording the Deed and any other instruments to be recorded in the public records in connection therewith.

10. CLOSING DATE AND PLACE.

Closing shall take place at the offices of the Escrow Agent commencing at 11:00 a.m. on the Closing Date.

11. DEFAULT.

11.1 If Purchaser defaults on any term, condition, covenant, agreement or other provision of this Agreement on the part of Purchaser to be performed and/or kept, then Seller's sole and exclusive remedy for such default shall be to terminate this Agreement by giving a written notice of termination to Purchaser and retain the Earnest Money (and all interest earned thereon) as full and agreed upon liquidated damages (provided, however, the Earnest Money is not intended to cover, and Purchaser shall remain liable to Seller for, any and all claims, causes of action, losses, damages, liabilities, liens, fees, costs and expenses incurred by Seller (including reasonable attorneys' fees and costs through trial and all appellate levels and proceedings) as a result of Purchaser's failure to fully satisfy its obligations to restore the Property and/or to indemnify, defend and hold Purchaser harmless as set forth in Section 3 above) and, upon the delivery of the Earnest Money (and all interest earned thereon) to Seller, the parties shall be released from this Agreement, except for those terms, provisions, obligations and liabilities that expressly survive the termination of this Agreement. The parties acknowledge and agree that this provision for liquidated damages is a fair and reasonable measure of the damages to be suffered by Seller in the event of Purchaser's default based on the fact that the exact amount of damages that Seller may incur is incapable of ascertainment.

11.2 If Seller defaults on any term, condition, covenant, agreement or other provision of this Agreement on the part of Seller to be performed and/or kept, then Purchaser shall have, as its sole and exclusive remedy, any one of the following remedies: (a) to terminate this Agreement by giving a

written notice of termination to Seller and receive the return the Earnest Money (and all interest earned thereon) and, upon the delivery of the Earnest Money (and all interest thereon) to Purchaser, the parties shall be released from this Agreement, except for those terms, provisions, obligations and liabilities that expressly survive the termination of this Agreement; or (b) to waive the default, proceed to Closing and close on and take title to the Property subject to such default without any reduction in the Purchase Price; or (c) to commence an action for specific performance against Seller to compel Seller to convey title to the Property to Purchaser in accordance with the terms and provisions of this Agreement.

11.3 Notwithstanding anything to the contrary contained in this Agreement, except for the failure to close on the purchase, sale and dedication of the Property on the Closing Date, neither party shall be in default under this Agreement unless: (a) the non-defaulting party shall have first provided written notice of the default to the defaulting party; and (b) the defaulting party shall have failed to cure the default within a period of fifteen (15) days after receiving notice thereof from the non-defaulting party.

## 12. BROKER.

Each party represents and warrants to the other that there is no real estate broker, agent or finder involved with respect to the transaction contemplated by this Agreement. Each party (the "Indemnifying Party") shall indemnify, defend and hold the other party (the "Indemnified Party") harmless from and against any claim, cause of action, loss, damage, liability, fee, cost or expense incurred by the Indemnified Party (including reasonable attorneys' fees and costs through trial and all appellate levels and proceedings) as a result of any breach of the foregoing representation and warranty by the Indemnifying Party. This Section shall survive Closing.

## 13. ENFORCEABILITY.

If any provision of this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, then such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed as if the invalid, illegal or unenforceable provision had never been contained herein.

## 14. NOTICE.

All notices to be given under this Agreement shall be in writing and sent to the parties and the Escrow Agent as hereinafter provided, by hand delivery; facsimile; certified mail (return receipt requested); postage prepaid; or by a nationally recognized overnight courier service. Any such notice shall be deemed given upon the earlier of receipt by the addressees if hand delivered (or attempted delivery if refused by the intended recipient thereof); at the time of transmission if delivered by facsimile and a confirmation of successful transmission is received; on the third (3<sup>rd</sup>) day after deposit thereof in the United States mail, if mailed and proper postage affixed thereto; or on the next business day after deposit with a recognized overnight courier service.

Notices to Seller shall be sent to 12900 SW 128<sup>th</sup> Street, Suite 200, Miami, Florida 33186, Attn: Hector Garcia, Facsimile No. (305) 971-0190; together with a copy to Sheitelman Law P.A., Attn: Michael S. Sheitelman, Esq., 3858-S Sheridan Street, Hollywood, Florida 33021, Facsimile No. (954) 839-6454.

Notices to Purchaser shall be sent to 6591 Orange Drive, Davie, Florida 33314, Attn: Phillip R. Holste, Program Manager Administrator, Facsimile No. (954) 797-1087; together with a copy to the Law Offices of John C. Rayson, Attn: John C. Rayson, Esq., 2400 E. Oakland Park Boulevard, Suite 200, Fort Lauderdale, Florida 33306, Facsimile No. (954) 566-8902.

Notices to Escrow Agent shall be sent to Ryan & Ryan, PA, Attn: Archie Ryan, Esq., 700 East Dania Beach Boulevard, Dania Beach, Florida 33004, Facsimile No. (954) 921-1247; together with a copy to the other party to this Agreement in the manner for notices provided above.

The place to which any party is entitled to receive any notice, and the person(s) designated to receive any notice on behalf of any party, may be changed by such party by giving notice thereof in accordance with the foregoing provisions. The attorneys for the parties are authorized to send and receive notices and demands on behalf of their respective clients under this Agreement.

15. GOVERNING LAW.

This Agreement shall be governed by, enforced and construed under the laws of the State of Florida. Venue for all actions, litigation and/or other proceedings arising out of this Agreement shall be exclusively in Broward County, Florida.

16. ENTIRE AGREEMENT.

This Agreement contains the entire agreement and understanding between the parties relating to the transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, terms, conditions, representations, warranties, covenant, agreements and statements, whether oral or written, are merged herein. The parties have participated fully in the negotiation of this Agreement, and accordingly, this Agreement shall not be more strictly construed against any one of the parties.

17. AMENDMENT.

This Agreement may be amended or modified only by a written instrument executed by the party against whom enforcement is sought. The waiver of any default, term, condition, covenant, agreement or other provision of this Agreement must be in writing signed by the party waiving such default, term, condition, covenant, agreement or other provision.

18. SUCCESSORS.

This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns

19. COUNTERPARTS.

This Agreement may be executed in multiple counterparts, each of which individually shall be deemed an original, but when taken together shall be deemed to be one and the same Agreement. The signatures of the parties on copies of this Agreement or any amendments hereto transmitted by facsimile transmission shall be deemed originals for all purposes of this Agreement or any such amendment.

20. LITIGATION COSTS.

If any action, litigation or other proceeding arising out of this Agreement is commenced by a party against the other, then the prevailing party in such action, litigation or proceeding shall recover all fees, costs and expenses incurred thereby therein (including, without limitation, reasonable attorneys' fees through and including all trial, appellate and post-judgment levels and proceedings) from the non-prevailing party. This Section shall survive Closing or any earlier termination of this Agreement.

21. TIME.

Time is of the essence with regard to every term, condition, covenant, agreement and other provision of this Agreement. If any date upon which, or by which, an action under this Agreement is required to have been performed or completed is a Saturday, Sunday or legal holiday recognized by the federal government or the State of Florida, then the date for such action shall be extended to the first day that is after such date and is not a Saturday, Sunday or legal holiday recognized by the federal government or the State of Florida.

## 22. ESCROW AGENT.

The Escrow Agent shall hold in and disburse from escrow any monies and documents which are delivered to it by the parties pursuant to and in accordance with the terms and provisions of this Agreement. The Escrow Agent is authorized and directed to place the Earnest Money in an interest bearing escrow account with any financial institution having branches in Miami-Dade County, Broward County or Palm Beach County without being accountable for the yield on such escrow account. The parties recognize that the Earnest Money may not be placed in an interest bearing escrow account on the date it is delivered to the Escrow Agent, but the Escrow Agent shall place the Earnest Money in an interest bearing escrow account within a commercially reasonable time thereafter. The Escrow Agent shall not be liable for any actions taken by it in good faith, but only for its gross negligence or willful misconduct. Each party does hereby agree to indemnify and hold the Escrow Agent harmless from and against any and all claims, demands, losses, liabilities, damages, fees, costs and expenses (including reasonable attorneys' fees and court costs at all trial and appellate levels) which the Escrow Agent may incur in its capacity as escrow agent under this Agreement, except if any such claim, demand, loss, liability, damage, fee, cost or expense incurred is due to or as a result of the Escrow Agent's gross negligence or willful misconduct. If there is any dispute as to the disposition of any monies or documents held by the Escrow Agent under this Agreement, then the Escrow Agent is hereby authorized to interplead such monies and/or documents with any court of competent jurisdiction and thereupon be released from all obligations and liabilities hereunder.

## 23. SPECIAL PROVISIONS.

### 23.1 Modification of Project Approvals.

Purchaser acknowledges that a portion of the Property is part of and included within an approved residential project commonly known as "Blackstone" (the "Project") owned by Seller. Purchaser acknowledges that Seller will be seeking modifications to the existing approvals, orders, permits and other governmental authorizations for the Project (such existing approvals, orders, permits and other governmental authorizations for the Project are referred to herein individually as a "Project Approval" and collectively as the "Project Approvals") to, among other things, remove a portion of the Property from the Project Approvals. In that regard: (a) Seller shall have the right (at its sole cost and expense) to submit to and process with all governmental authorities any petition, application and other submittal (any such petition, application and other submittal is referred to herein individually as an "Approval Submittal" and collectively as the "Approval Submittals") that is required for Seller to modify the Project Approvals as contemplated herein; and (b) Purchaser shall execute and deliver to Seller any Consent required by a governmental authority for Seller to submit and process any Approval Submittal for a modification to any Project Approval as contemplated herein. This Section shall survive Closing.

### 23.2 Lake Easement, Lake Access Easement and Lake Utility Easement.

23.2.1 At Closing, Purchaser shall grant Seller the following easements in connection with the real property depicted as "Water Management and Lake Maintenance Easement" on Exhibit "B" attached hereto and made a part hereof (such depiction is referred to herein as the "Lake"): (a) an easement (the "Lake Easement") in, on, under, through and across the Lake for the purpose of constructing and maintaining a lake for drainage and water management purposes for use by Seller in connection with the Project; (b) an easement (the "Lake Maintenance Easement") in, on, under, through and across a portion of the Property around the Lake (i.e., four feet (4') from the edge of water) twenty feet (20') in width for lake maintenance purposes; (c) an easement (the "Berm Easement") in, on, under, through and across a portion of the Property around the Lake Maintenance Easement fifteen feet (15') in width for the purpose of installing, maintaining, repairing and replacing a berm in connection with the Lake Easement; (d) an easement (the "Drainage Easement") in, on, under, through and across a portion of the Property connecting the Lake and the Project in a width and location to be mutually agreed upon by the parties prior to the expiration of the Inspection Period for the purpose of installing, maintaining, repairing



and replacing such pipes, lines and related drainage facilities necessary to construct and utilize the Lake as a lake for drainage and water management purposes in connection with the Project; (e) an easement (the "Lake Access Easement") in, on, under, through and across a portion of the Property connecting the Lake and the Project in a width and location to be mutually agreed upon by the parties prior to the expiration of the Inspection Period for the purpose of accessing the Lake for the purposes of constructing, maintaining and repairing the Lake and any related pipes, lines and drainage facilities. It is hereby acknowledged and agreed by the parties that the Lake Easement shall include the actual water area and all associated lake maintenance easements. Seller shall have the right to include the Lake Easement, the Lake Maintenance Easement, the Berm Easement, the Drainage Easement and the Lake Access Easements (collectively, the "Lake and Related Easements") as a water management tract in the approvals, orders, permits and other governmental authorizations ultimately received for the Project and, in that regard, Seller shall have the right to include the Lake and Related Easements as a water management tract in any Approval Submittal made by Seller in connection with: (y) any new approval, order, permit or other governmental authorization sought by Seller for the Project; or (z) any modification of any Project Approval sought by Seller. This Section shall survive Closing.

23.2.2 If the Lake and Related Easements are included as a water management tract in any approval, order, permit or other governmental authorization for the Project, then Seller shall have the obligation to construct (pursuant to its own timing needs) and maintain the Lake and Related Easements (and the improvements contemplated thereby) at its sole cost and expense in accordance with the terms and conditions of any such approval, order, permit or other governmental authorization; provided, however, Seller shall have the right to assign its maintenance obligation to any association formed by Seller for the Project pursuant to a written assignment and assumption agreement, and upon the execution of such assignment and assumption agreement, Seller shall be forever released from all such maintenance obligations. This Section shall survive Closing.

23.2.3 Purchaser shall promptly upon the request of Seller, execute and deliver to Seller, by separate instrument, any easement, dedication or other agreement (including, without limitation, lake maintenance easements, drainage easements and flowage easements) required by any governmental authority (including any drainage district) in connection with the use of the Lake and Related Easements as contemplated by this Agreement in the form required by any such governmental authority. This Section shall survive Closing.

### 23.3 Cul-de-Sac Easement and Utility Easement.

23.3.1 At Closing, Purchaser shall grant Seller the following easements in connection with the real property depicted as "Cul-de-Sac Easement" on Exhibit "B" attached hereto (the "Cul-de-Sac"): (a) an easement (the "Cul-de-Sac Easement") in, on, under, through and across a portion of the Cul-de-Sac for the purposes of construction, vehicular and pedestrian use, maintenance, repair and replacement of a cul-de-sac and related improvements (including, without limitation, curbs, gutters, sidewalks and landscaping) for use in connection with the Project; and (b) an easement (the "Utility Easement") in, on, under, through and across a portion of the Cul-de-Sac for the purpose of installing, maintaining, repairing and replacing cables, lines, pipes and other utility facilities for use in connection with the Project. Seller shall have the right to include the Cul-de-Sac Easement and Utility Easement in the approvals, orders, permits and other governmental authorizations ultimately received for the Project and, in that regard, Seller shall have the right to include the Cul-de-Sac Easement and Utility Easement in any Approval Submittal made by Seller in connection with: (y) any new approval, order, permit or other governmental authorization sought by Seller for the Project; or (z) any modification of any Project Approval sought by Seller. This Section shall survive Closing.

23.3.2 Seller shall have the obligation to construct (pursuant to its own timing needs) and maintain the Cul-de-Sac Easement and Utility Easement (and the improvements contemplated thereby) at its sole cost and expense; provided, however, Seller shall have the right to assign its maintenance obligation to any association formed by Seller for the Project pursuant to a written assignment and assumption agreement, and upon the execution of such assignment and assumption



agreement, Seller shall be forever released from all such maintenance obligations. This Section shall survive Closing.

23.3.3 Purchaser shall promptly upon the request of Seller, execute and deliver to Seller, by separate instrument, any easement, dedication or other agreement required by any governmental authority (including any drainage district) in connection with the use of the Cul-de-Sac as contemplated by this Agreement in the form required thereby. This Section shall survive Closing.

23.4 Open Space Property.

Purchaser acknowledges that Seller intends to modify the Project Approvals and obtain a new site plan approval for the Project (the "New Site Plan Approval") using the Open Space Property to satisfy its open space requirements and receive ten (10) "bonus" points for the Project and, in that regard, Seller shall have the right to include the Open Space Property in any Approval Submittal made to a governmental authority in connection with Seller's efforts to modify the Project Approvals and obtain the New Site Plan Approval using the Open Space Property to satisfy its open space requirements and receive ten (10) "bonus" points for the Project. This Section shall survive Closing.

23.5 Not Contingent.

The parties hereby acknowledge and agree that neither this Agreement nor the transaction contemplated herein is conditioned or contingent upon Seller obtaining any new approval or modification to any existing approval for the Project.

23.6 Discretionary Powers.

Nothing contained in this Agreement shall prohibit, impede or constrain Purchaser's discretionary powers and authority to review, approve, approve subject to conditions or disapprove any petition, application or other submittal made to it in connection with any Approval Submittal made by Seller in seeking to obtain any new approval for the Project (including, without limitation, the New Site Plan) or the modification of any Project Approval. This Section shall survive Closing.

[signatures follow on next page]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the dates set after their respective signatures.

Signed, sealed and delivered  
in the present of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

ATTESTED BY:

\_\_\_\_\_  
Town Clerk

SELLER:

SOUTHERN HOMES OF DAVIE V, LLC, a Florida  
limited liability company

By: Southern Homes of Broward, Inc., a Florida  
corporation, its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

PURCHASER:

TOWN OF DAVIE, a municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

#### JOINDER OF ESCROW AGENT

The undersigned Escrow Agent hereby joins in the Agreement and, by doing so, Escrow Agent hereby acknowledges its duties and obligations under the terms and provisions thereof and hereby agrees to be bound by and to perform such duties and obligation in accordance with such terms and provisions.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

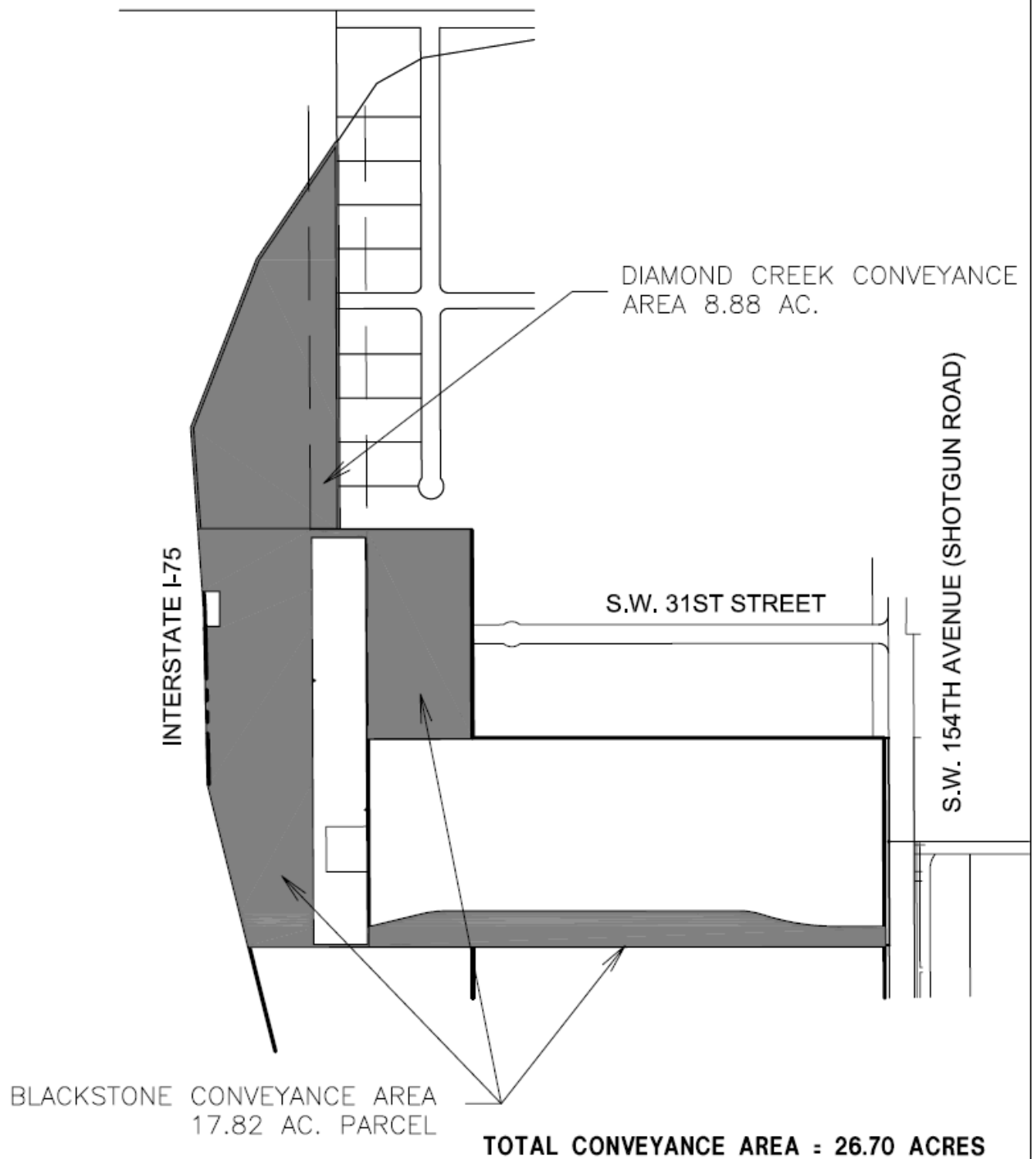
Date: \_\_\_\_\_

**EXHIBIT "A"**

Legal Description of the Property

[see following page]





12855 S.W. 132nd Street, Suite 206  
Miami, Florida 33186  
Phone: (305) 253-1970 Fax: (305) 253-0897  
Authorization No. EB-26343

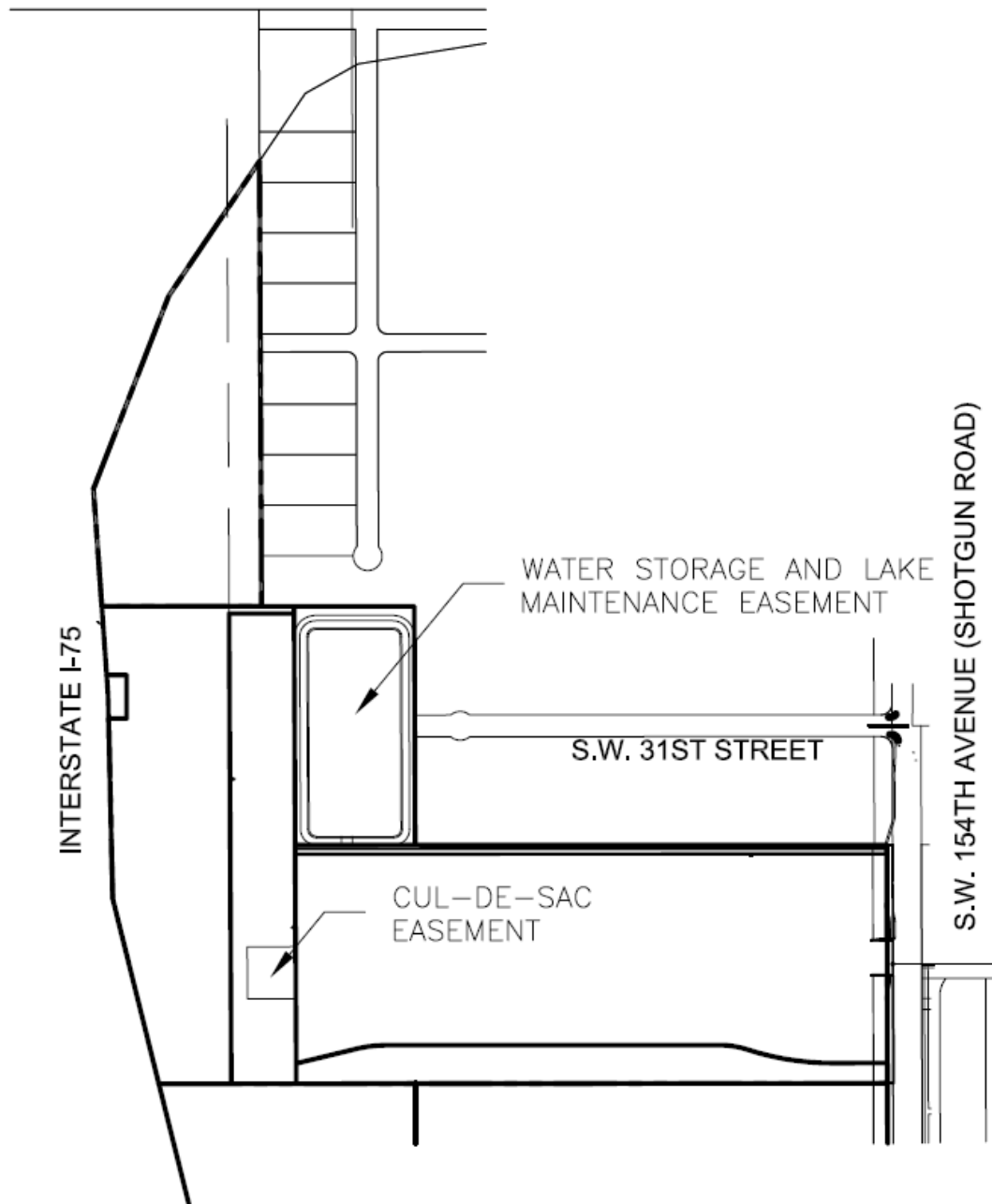
**EXHIBIT A**  
**CONVEYANCE PARCEL SKETCH**

**PROJECT NO.: 220316**

**EXHIBIT "B"**

Legal Description of the Lake Easement Area

[see following page]



12855 S.W. 132nd Street, Suite 206  
 Miami, Florida 33186  
 Phone: (305) 253-1970 Fax: (305) 253-0897  
 Authorization No. EB-26343

**EXHIBIT B**  
**WATER STORAGE/LAKE MAINT. AND**  
**CUL-DE-SAC EASEMENT**

**PROJECT NO.: 220316**

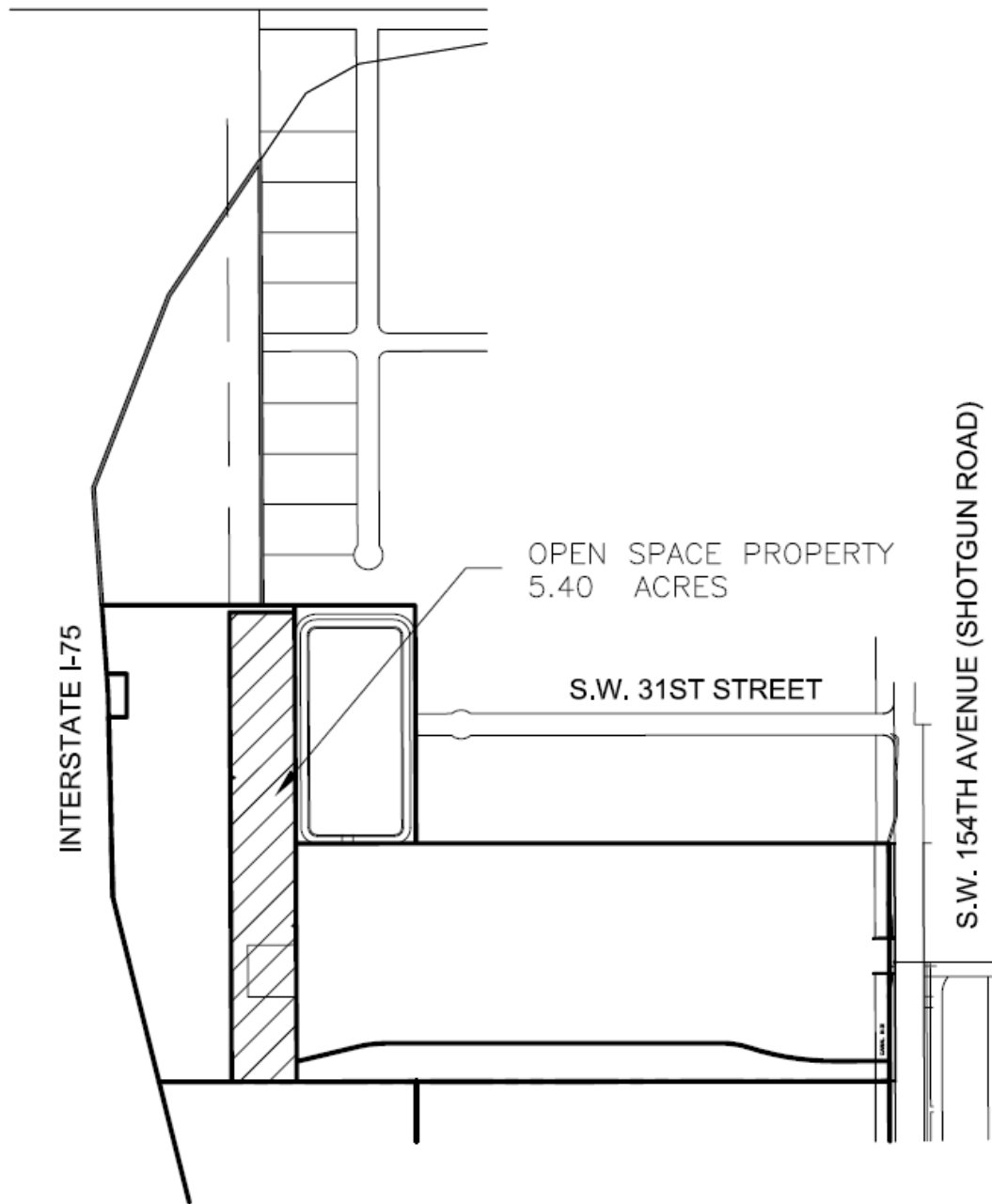
**EXHIBIT "C"**

Legal Description of the Open Space Property

[see following page]







12855 S.W. 132nd Street, Suite 206  
Miami, Florida 33186  
Phone: (305) 253-1970 Fax: (305) 253-0897  
Authorization No. EB-26343

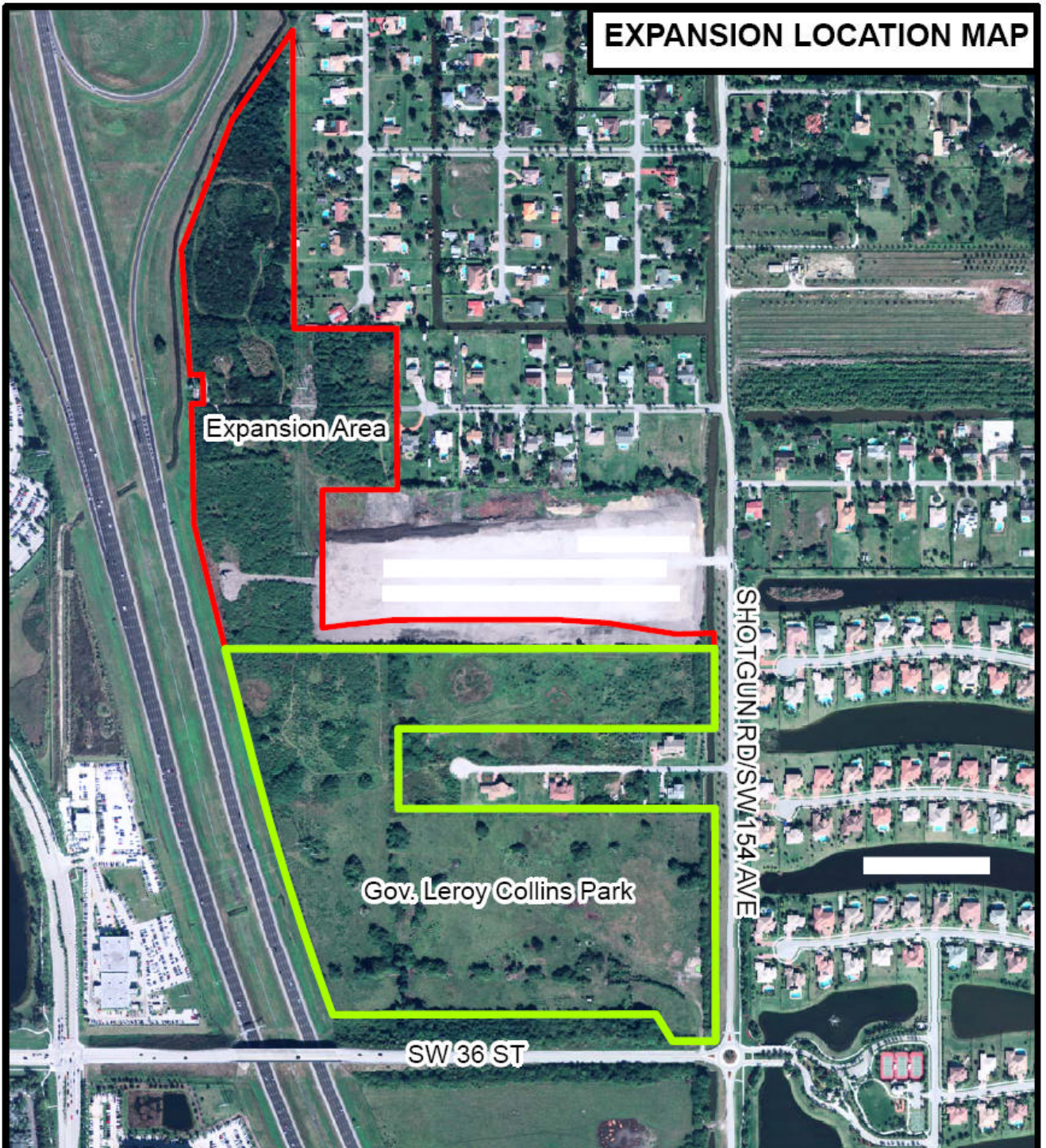
**EXHIBIT C**  
**OPEN SPACE PROPERTY**

**PROJECT NO.: 220316**



**EXHIBIT B: LOCATION MAP**

# EXPANSION LOCATION MAP



## LEGEND



Gov. Leroy Collins  
Park Boundary



Park Expansion  
Boundary



NOT TO SCALE

## **EXHIBIT C: ESTIMATED EXPENDITURES**

### **Governor Leroy Collins Park Expansion Estimated Expenditures**

	<b>TOTAL</b>
PURCHASE PRICE	\$ 2,600,000
APPRAISALS	Completed
SURVEY (EST)	\$ 2,500
ESA PHASE I	\$ 2,000
ESA PHASE II (EST - IF NECESSARY)	\$ 10,000
TITLE SEARCH/INSURANCE (EST)	\$ 9,300
ATTORNEY FEES (EST)	\$ 5,000
RECORDING FEES (EST)	\$ 100
CONTIGENCIES	\$ 21,100
TOTAL ESTIMATED COST	\$ 2,650,000